

# **Municipal Water Law Discussion Paper #2 June 23, 2006**

## **What should the Department of Health's role be in determining what is "Timely and Reasonable"?**

### **Existing draft policy position (July 18, 2005 paper)**

Under the existing draft policy, the Department of Health (DOH) would not have oversight in making timely and reasonable determinations. This factor is considered a civil matter between the municipal water supplier (MWS) and the applicant. Local governments may provide oversight.

DOH will provide guidance for timely and reasonable determinations only as they relate to the Coordination Act (RCW 70.116) and the Municipal Water Law (RCW 43.20.260).

### **Description of Issue**

As part of the Municipal Water Law, MWS's have a duty to provide service within their retail service areas as long as the application meets four threshold factors that are described in the law. One of the threshold factors under which MWS do not have to provide service is if service cannot be provided in a timely and reasonable manner.

Concerns were raised about DOH's role in making timely and reasonable determinations. Some believe DOH should play a more active role in resolving disputes over what is "timely and reasonable."

The need to provide service in a timely and reasonable manner is also found in the Coordination Act (RCW 70.116) in which criteria are given and local governments are provided authority to develop timely and reasonable criteria.

### **Alternatives**

#### **1. Retain existing policy position.**

Under this alternative, DOH would have no oversight role in timely and reasonable determinations. MWS's and local governments would establish a process for making timely and reasonable determinations. Most timely and reasonable issues that have arisen (because of the Coordination Act) have been about land use. These issues are outside DOH's area of expertise. Determining capacity, and ensuring water is provided in a safe and reliable manner were identified in the statute as requirements for DOH independent of timely and reasonable determinations. DOH will continue to provide technical assistance on public health and safety issues as it always has.

## **2. DOH will develop guidance.**

Under this alternative, DOH would develop guidance on “timely and reasonable” for the Coordination Act. DOH would also explain how this guidance relates to “timely and reasonable” under the Municipal Water Law. Local governments and MWS’s could use this guidance to establish their own processes for making timely and reasonable determinations.

## **3. DOH should have an active role and provide oversight when issues arise.**

Under this alternative, DOH would have an active role in determining what is considered timely and reasonable when issues arise. This would have a potentially large workload impact on DOH. Issues involving land use would be difficult for DOH to sort out without additional expertise.

## **Preferred Alternative**

DOH staff prefers alternatives 1 and 2, for the reasons given below:

- The timely and reasonable threshold factor is different from the others threshold factors outlined in the Municipal Water Law, because it is specific to each situation and the parties involved (the MWS, the applicant, and local government). It is similar to a private party dispute and should be settled accordingly.
- Having DOH play a more active role in settling these disputes would create a significant workload impact and detract from its public health mission. The statute makes a clear distinction between the key public health component (capacity / DOH expertise) and the timely and reasonable element (MWS / applicant / local government expertise).
- DOH can help by developing guidance on timely and reasonable as it relates to the Coordination Act and explaining how it relates to the Municipal Water Law. This information would be available to utilities, local governments, and water service applicants.